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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FORTY-SEVENTH SESSION

Rapporteur: Mr. Francisco Villagran Kramer

CHAPTER IV

INTERNATIONAL LIABILITY FOR INJURIOUS CONSEQUENCES ARISING OUT OF ACTS NOT PROHIBITED BY INTERNATIONAL LAW

Addendum

CONTENTS

		Paragraphs	Page
B.	Consideration of the topic at the present session . .	...	
	...		
	4. Establishment of a Working Group on the identification of dangerous activities	1 - 4	

4. Establishment of a Working Group on the identificication of dangerous activities

1. At its 239rd meeting, on 1 June 1995, the Commission decided to establish a Working Group on the topic "International liability for injurious consequences arising out of acts not prohibited by international law". The Working Group was composed of the following members: Mr. Julio Barboza (Special Rapporteur and Chairman), Mr. John de Saram, Mr. Gudmundur Eiriksson, Mr. Nabil Elaraby, Mr. Salifou Fomba, Mr. Igor I. Lukashuk, Mr. Robert Rosenstock, Mr. Alberto Szekely and Mr. Chusei Yamada.

2. The Working Group was entrusted with the mandate of identifying the activities which came within the scope of the topic.

3. The Working Group held three meetings between 23 June to 5 July 1995. It had before it a document prepared by the Secretariat, presenting an overview of the ways in which the scope of multilateral treaties dealing with transboundary harm and with liability and prevention had been defined in terms of the activities or substances to which they applied.

4. At its 2416th meeting, on 13 July 1995, the Commission considered the report of the Working Group and in the light of that report, the Commission agreed that it must in its future work have a clear view of the kind of activities to which the draft articles on the topic apply. The definition of the scope of the topic, as provided in articles 1 and 2, may, in itself, not be sufficient for the next stage of the work. The Commission, however, is of the view that it can work on the basis that the types of activities listed in various conventions dealing with issues of transboundary harm come within the scope of the topic as defined in articles 1 and 2. Examples include the Convention on Environmental Impact Assessment in a Transboundary Context of 25 February 1991, the Convention on Transboundary Effects of Industrial Accidents of 17 March 1992 and the Convention on Civil Liability for Damage Resulting from Activities Dangerous to the Environment of 9 March 1993. The Commission recognizes that, at some point more specificity may be required in the articles, on the types of activities falling within the ambit of the topic. That specification, however, will depend on the provisions on prevention which have been adopted by the Commission and the nature of the obligations on liability which the Commission will be developing. One way of achieving that specification would be to prepare a list of activities through a method which the Commission could recommend at a later stage of work.

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